

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)

AYANNA NESBITT)

vs.) No. 12-0441

COMMONWEALTH EDISON COMPANY)

Complaint as to billing/charges)

in Chicago, Illinois.)

Chicago, Illinois

October 30, 2012

Met pursuant to notice at 11:00 a.m.

BEFORE:

MR. JOHN RILEY, Administrative Law Judge.

APPEARANCES:

MR. MARK L. GOLDSTEIN, PC, by

MR. MARK L. GOLDSTEIN

3019 Province Circle

Mundelein, Illinois 60060

and

MS. ERIN BUECHLER

440 South LaSalle Street, Suite 3300

Chicago, Illinois 60605

for Commonwealth Edison Company;

BY: MS. AYANNA NESBITT (via telephone)

for the complainant, Ayanna Nesbitt.

L.A. COURT REPORTERS, by

Julianne Murphy, CSR

License No. 084-004407

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Witnesses: Direct Cross direct cross Examiner
(None.)

E X H I B I T S

Number For Identification In Evidence
(None marked.)

1 JUDGE RILEY: Pursuant to the direction of the
2 Illinois Commerce Commission, I call Docket 12-0441.
3 This is a complaint by Ayanna Nesbitt versus
4 Commonwealth Company as to billing and/or charges in
5 Chicago, Illinois.

6 Mr. Goldstein, would you enter an appearance
7 for the record, please.

8 MR. GOLDSTEIN: Yes. For Commonwealth Edison
9 Company, Mark L. Goldstein, 3019 Province Circle,
10 Mundelein, Illinois 60060. My telephone number is
11 (847) 949-1340.

12 With me this morning is Erin Buechler of
13 ComEd.

14 JUDGE RILEY: Thank you. And this is a status
15 that was scheduled back on August 30. We convened a
16 prehearing conference. There was no appearance by
17 the complainant and no explanation for why she was
18 not here. There was no one that appeared on her
19 behalf.

20 At that time, Mr. Goldstein, you made a
21 motion to dismiss, an oral motion to dismiss, for
22 want of prosecution.

1 I note for the record that at that time I
2 called the complainant at the number she had listed
3 on the complaint, got a recording, and left a message
4 advising her of the scheduled date and stating -- of
5 the date that I was continuing the matter to, which
6 was today's date.

7 However, I did not notify her that you had
8 made the motion to dismiss this matter for want of
9 prosecution. Consequently, she has no notice that
10 this motion is pending.

11 What I want to do before we go any further
12 is give her another try on the phone and see if she
13 responds.

14 (Call placed.)

15 JUDGE RILEY: Good morning. Is Ayanna Nesbitt
16 there, please?

17 MS. AYANNA NESBITT: This is her. How can I
18 help you?

19 JUDGE RILEY: Ms. Nesbitt, my name is Judge
20 Riley. I'm with the Illinois Commerce Commission.

21 I'm calling on behalf of the -- excuse me,
22 in regard to the complaint that you filed back in

1 July against Commonwealth Edison Company.

2 MS. AYANNA NESBITT: Yes.

3 JUDGE RILEY: We had a prehearing conference
4 scheduled for August 30, at which you didn't appear,
5 and counsel for Commonwealth Edison made a motion to
6 dismiss your complaint.

7 And I continued the matter to today's date
8 to find out if you could let us know why it was that
9 you had failed to appear at the prehearing
10 conference.

11 MS. AYANNA NESBITT: Sir, I apologize for that,
12 but I was in the hospital. I've actually been ill
13 lately, in and out, so I do apologize.

14 And I got the message and misplaced -- to
15 return your call. I actually called. A young lady
16 answered and I didn't know -- you just said Commerce
17 Commission.

18 I asked her -- I said someone called me but
19 I don't know what for but I put in a complaint. And
20 she couldn't find anything.

21 So I did get the message that you left that
22 I had missed a meeting.

1 JUDGE RILEY: Okay. Well, I guess it's my
2 question --

3 MS. AYANNA NESBITT: So I have documents, you
4 know, if any need to verify what I'm saying, but ...

5 JUDGE RILEY: No. That's fine. My next
6 question is: Do you want to proceed with your
7 complaint?

8 MS. AYANNA NESBITT: I do. I really do.

9 JUDGE RILEY: All right. One of the things I
10 want to do is try and put a little focus to it.

11 You stated that you -- back in April of 2011
12 you were put on a payment plan for \$825.40?

13 MS. AYANNA NESBITT: Yes.

14 JUDGE RILEY: Was that the total amount due or
15 was that a per-month?

16 MS. AYANNA NESBITT: I think that was the
17 amount that was due at that time.

18 JUDGE RILEY: And you had said that you made
19 one -- you had missed one payment?

20 MS. AYANNA NESBITT: Part of what they had told
21 me I had missed one -- and I'm going off the top of
22 my head right now to go back.

1 But they stated that I had missed a payment.

2 I don't remember missing a payment per what they told
3 me. She stated that I had missed one.

4 However, I know if you miss one they
5 automatically take you off, so that's why I'm kind of
6 thinking that I would not have missed that one.

7 JUDGE RILEY: And you later state in your
8 complaint that you had responded with a payment of
9 \$490 and that put your account at zero balance.

10 MS. AYANNA NESBITT: Yes, sir. Again, when
11 they -- when I checked the mail, there was a
12 statement in there saying disconnected if the total
13 amount was not rendered at whatever date it had on
14 the final notice.

15 So I paid that amount, which would have
16 taken me to whatever bill that was coming, which at
17 that time would have been a zero balance, but, you
18 know, of course that coming month would have been
19 just that amount due.

20 JUDGE RILEY: Okay. What is the total amount
21 outstanding right now according to your records,
22 according to the last bills you've received, do you

1 know?

2 MS. AYANNA NESBITT: It was 1,300 and
3 something-odd dollars.

4 JUDGE RILEY: And is that entire amount due as
5 of right now?

6 MS. AYANNA NESBITT: I think so, yes.

7 JUDGE RILEY: And have you made any payments on
8 the account?

9 MS. AYANNA NESBITT: Well, I had not made any
10 payments. When I went to make a payment, they told
11 me that it wouldn't matter, that the bill [sic] would
12 still go off.

13 I said, Well, can you give me some type of
14 arrangement? I said, I have all kinds of
15 documentation that I've been off work. I haven't
16 made any money, and you know, it's not just you.
17 It's everybody that I'm not able to pay.

18 I'm the only source of income in the house,
19 so if I'm not working, I'm not able to pay any money.

20 No, we can't do anything.

21 What I had to end up doing by their
22 suggestion was: You can get a medical letter from

1 your doctor which will give you 60 days without
2 payment. By the 60th day, then you can get on a
3 payment plan.

4 Well, I thought that was so outrageous that
5 that was the only way that I could actually keep the
6 lights on. So that's what I did by their better
7 judgment, because I had never heard of it.

8 JUDGE RILEY: Let me turn --

9 MS. AYANNA NESBITT: I guess --

10 JUDGE RILEY: Okay. Go ahead.

11 MS. AYANNA NESBITT: I guess that was their way
12 of justifying that I was actually ill. I don't know.

13 JUDGE RILEY: All right. Let me turn to ComEd
14 right now and see if their -- what response, if any,
15 Commonwealth Edison has.

16 MS. AYANNA NESBITT: Okay.

17 MR. GOLDSTEIN: I guess the simple response is
18 that Ms. Nesbitt has defaulted on 3 payment
19 arrangements over the last 18 months and she has not
20 made a single payment on her electric bill since
21 March of this year.

22 I don't know what to do other than

1 that, and from what I gather by her conversation this
2 morning she has no funds, and so to try to put on
3 another payment arrangement doesn't seem to be
4 practical.

5 JUDGE RILEY: What did Commonwealth's records
6 say with regard to the payments that hadn't -- you
7 haven't received any payments?

8 MR. GOLDSTEIN: Since March of this year, one
9 \$70 -- the last payment was on March 26th of \$70, and
10 the current balance on her account is \$1,385.76.

11 So I guess you have to set for trial.

12 JUDGE RILEY: Ms. Nesbitt, would you be
13 available for that? You said that you've been
14 recently been hospitalized?

15 MS. AYANNA NESBITT: That's right. The last
16 time that I was actually in there was on the week of
17 the 30th.

18 JUDGE RILEY: Of August?

19 MS. AYANNA NESBITT: Yes. I think it was the
20 26th, whatever -- seven days straight, and like I
21 said, my working ability has been so limited that
22 what they were asking for was -- there was no way I

1 can do that.

2 I haven't not just paid because I don't want
3 to, and I have a history with ComEd.

4 So again, in March when they -- their
5 records wasn't even accurate to the payments that
6 they said that I had not made.

7 And what it goes back to, sir, is in -- I
8 believe it was November when I made that 400 and
9 some-dollar payment. That should have taken me to a
10 zero balance. They stated that they had no record of
11 me calling in saying that I had made the payment
12 bringing it to a zero balance.

13 So what it did was automatically put me on a
14 payment plan. Well, sir, at that time I was
15 100 percent healthy. I was doing well. I was
16 working. I was making the hours. So why they would
17 put me on a payment plan that I was not aware of
18 automatically I have no idea, and I had a zero
19 balance.

20 JUDGE RILEY: Mr. Goldstein, do you have any
21 indication about a payment plan? You said that there
22 have been three defaults?

1 MR. GOLDSTEIN: Yes. There was no 400 and
2 some-odd dollar payment made by Ms. Nesbitt on her
3 account. I don't know what on earth she's talking
4 about.

5 That's why we ought to go to an evidentiary
6 hearing, and we'll have somebody come in and explain
7 the billing.

8 JUDGE RILEY: Ms. Nesbitt, would you be up to
9 coming in for an evidentiary hearing in about a month
10 or so?

11 MS. AYANNA NESBITT: That would be fine. But
12 he said he don't know on earth what I'm talking about
13 when every representative I spoke with told me it
14 automatically, even with the zero balance, put you on
15 a payment plan unless someone physically calls in.

16 And they told me that they showed no record
17 of my calling, so I mean, I don't know when he say he
18 don't know what on earth if I made up something.

19 Each representative I talked to told me it
20 automatically put me on two payment plans that I did
21 not give permission to be put on. So when he say I
22 missed three, that's not true in the 18 months.

1 I remember only made authorization for one,
2 and that was the one back in April.

3 JUDGE RILEY: Well, that's one of the things
4 we're going to have to probably work out at hearing
5 is, you know, the discrepancy between what you
6 thought happened and what ComEd says happened.

7 MR. GOLDSTEIN: In looking at her account
8 activity statement, Judge, I see no deferred payment
9 agreement for April of this year.

10 MS. AYANNA NESBITT: Not April of this year.
11 It was April of last year.

12 MR. GOLDSTEIN: That, for sure, you defaulted
13 on.

14 MS. AYANNA NESBITT: Which made the full amount
15 due in November, which was the \$497 that should have
16 taken me to a zero balance except for the current
17 bill that was coming in.

18 JUDGE RILEY: Mr. Goldstein, you say there's no
19 record of a \$497 payment?

20 MR. GOLDSTEIN: Well, there is a default on her
21 payment arrangement. There's so many defaults here
22 it's hard to describe.

1 But she defaulted sometime in February
2 of 2012. They reinstated it, and obviously she
3 didn't go through with the payment plan.

4 We'll just come in and we'll discuss it at
5 an evidentiary hearing. We'll have somebody explain
6 the billing.

7 MS. AYANNA NESBITT: If I made that
8 arrangement -- they have one in December and they
9 have one in February that I did not give permission
10 for, and all they could tell me it automatically does
11 that. With a zero balance it automatically puts you
12 back on one.

13 And I'm like, Why would I be put on one if I
14 don't need to?

15 JUDGE RILEY: Well, Ms. Nesbitt, I don't think
16 the issue is whether or not you were on payment plans
17 for not.

18 What ComEd's position is and what they're
19 stating is that they just don't have the payments
20 from you for the -- you know, to cover your usage.

21 And that's why they're saying come in for an
22 evidentiary hearing. You can bring your records in.

1 They'll bring their records in, and we'll see
2 which -- what the actual situation is.

3 So the issue is not, you know, at what time
4 you were on what payment plan. It's just that the
5 payments haven't been made according to their
6 records.

7 MS. AYANNA NESBITT: Well, also by them having
8 me on that payment plan, it's all of this interest.
9 So all of the interest would have to be taken off.

10 So there's a discrepancy there because if
11 they had not put me on two plans of theirs like
12 you've been, I wouldn't have all of that interest.
13 And then there are times that they didn't even give
14 me credit for payments that I had made.

15 JUDGE RILEY: Do you have proof, documentation
16 of the payments you made?

17 MS. AYANNA NESBITT: I do, and I think I sent
18 them in my package as well.

19 JUDGE RILEY: What package was that?

20 MS. AYANNA NESBITT: The one that the Commerce
21 Commission had me fill out.

22 JUDGE RILEY: Okay. You filled out an informal

1 complaint and a formal complaint. Did you submit
2 documentation with either one of those?

3 MS. AYANNA NESBITT: I do believe I did. I had
4 them.

5 JUDGE RILEY: Do you still have copies of the
6 documents?

7 MS. AYANNA NESBITT: I do.

8 JUDGE RILEY: All right. Then what I was going
9 to suggest is that we select a date in December for
10 you to come in and pursue your complaint here,
11 because Commonwealth Edison's position is that they
12 don't have any record of these payments and that's
13 why your billing is presently at \$1,385.76.

14 And the next order of business would be to
15 find a date that's convenient to both parties in
16 December.

17 MS. AYANNA NESBITT: Okay. December is kind of
18 a hard month for me. On the 11th of December I have
19 a surgery scheduled.

20 JUDGE RILEY: Well, it's my understanding then
21 that you would not be available very soon anytime
22 after December 11; is that correct?

1 MS. AYANNA NESBITT: It's a two-week recovery
2 time they have, so you know, if all goes well,
3 then -- the estimated time he gave me was two weeks
4 from the actual date of Tuesday, December 11th to
5 recover from surgery.

6 So two weeks is the recovery time,
7 turnaround recovery time.

8 JUDGE RILEY: And that takes us right to
9 Christmas Day and that --

10 MR. GOLDSTEIN: Could we do this before the
11 11th, Judge?

12 JUDGE RILEY: It's going to be difficult. What
13 date did you have in mind, anything specific?

14 MR. GOLDSTEIN: The afternoon of December 5th?

15 JUDGE RILEY: I have a matter up at 1:30 but I
16 don't think it's going to take very long.

17 MR. GOLDSTEIN: That's a possibility.

18 JUDGE RILEY: Should we --

19 MR. GOLDSTEIN: Do you want to do it
20 December 3rd?

21 JUDGE RILEY: In the afternoon?

22 MR. GOLDSTEIN: No. In the morning,

1 December 3rd.

2 JUDGE RILEY: I've got matters up at 10:00 and
3 11:00.

4 December 5th, could we begin at 2:00
5 o'clock? Ms. Nesbitt, would that be good for you?

6 MS. AYANNA NESBITT: That sounds okay.

7 MR. GOLDSTEIN: That's fine with me, Judge.

8 JUDGE RILEY: All right then. I'll have the
9 clerk's office send out a notice.

10 Ms. Nesbitt, you'll be getting a written
11 notice that this matter is for set for an evidentiary
12 hearing on December 5th at 2:00 p.m., and at that
13 time you would be -- you'll be present in a
14 conference room and we'll sit down.

15 Bring all of the documentation you have that
16 supports your complaint and you'll be required to
17 produce it first. Mr. Goldstein -- and then you can
18 render any testimony that you have, and then
19 Mr. Goldstein will be allowed to ask you questions
20 about it.

21 And then when he presents his evidence,
22 you'll be allowed to question his witnesses as to

1 what they've testified to.

2 MS. AYANNA NESBITT: Okay.

3 JUDGE RILEY: All right?

4 MS. AYANNA NESBITT: Okay then.

5 JUDGE RILEY: So I'll have the clerk's office
6 send out notice that this matter is continued to
7 December 5th at 2:00 p.m.

8 MS. AYANNA NESBITT: And you would have the
9 address where I come and everything on that?

10 JUDGE RILEY: Yes, it will. It will be at 160
11 North LaSalle in Chicago. It's right downtown here.

12 MS. AYANNA NESBITT: Okay.

13 JUDGE RILEY: And you just come to the 8th
14 floor and they'll tell you what conference room it's
15 in.

16 MS. AYANNA NESBITT: Thank you.

17 JUDGE RILEY: Thank you very much.

18 (Whereupon, the above-entitled
19 matter was continued to
20 December 5, 2012, at 2:00 p.m.)

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22